

The University of Chicago

# THE LEGAL STATUS OF TEACHERS

A PART OF A DISSERTATION SUBMITTED TO  
THE FACULTY OF THE DIVISION OF THE  
SOCIAL SCIENCES IN CANDIDACY FOR THE  
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATION  
DECEMBER, 1941

By  
ALBERT S. NICHOLS

CHICAGO, ILLINOIS

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## INTRODUCTION

### The Problem

The forty-eight states in providing for public education have created school districts and delegated to boards of education in these districts the right to elect their own public school teachers. The states have generally delegated to local boards authority over teachers, although in some matters the teachers are responsible directly to the state. Relations between teacher and state, teacher and board of education, and teacher and community must be regulated either by statutes enacted by the legislatures of the several states or by some accepted principles or rules of common law.

Through an analysis of these relationships and court decisions relating to teachers, this study undertakes to determine the legal status of teachers in the public schools of the United States in so far as that status is governed by court decisions.

### Scope of the Problem

The study deals with teachers in all public schools from the lowest units through the junior college and with court decisions pertaining to: (1) Employment of Teachers, (2) Dismissal of Teachers, (3) Rights and Liabilities of Teachers, and (4) Pensions, Minimum Wages, and Salary Change.

The teacher's legal status has been defined in part by earlier writers, either as part of a larger work, such as The Courts and the Public Schools by Edwards,<sup>1</sup> or as a rather intensive study of some particular aspect, such as the thesis entitled: The Teacher's Contractual Status by Allen.<sup>2</sup>

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<sup>1</sup>Newton Edwards, The Courts and the Public Schools. Chicago: University of Chicago Press, 1933.

<sup>2</sup>Ira Madison Allen, The Teacher's Contractual Status. Teachers College Contribution to Education No. 304. New York: Teachers College, Columbia University, 1928.

This study is an attempt to give a complete treatment of the legal status of teachers as set forth in the common-law. Furthermore, an attempt is made to point out trends and new developments which are influenced by a changing public policy.

Generally speaking, the courts are more stable and less affected by public opinion than most of the other institutions of society. However, the courts which are responsible for the common-law are somewhat affected by public opinion. As this opinion becomes crystallized, the court decisions, which form a part of the common-law, are given in accordance with what the courts deem to be "sound public policy."

### The Methods and Sources

An analysis is made of eight hundred decisions of the courts of last resort in the different states, with special emphasis given to the three hundred cases of the last eight years, in order to determine the common-law principles which set forth the teacher's legal status. Since older decisions still represent the law in states where there have been no recent cases or reversal of opinion, the older cases are also analyzed in order that a complete picture down to the present time may be presented. Like-decisions are grouped and the prevailing rule indicated. Not only does the main manuscript present and illustrate the rules of law, but the footnotes show the extensiveness of the application of the rules, the states where effective, and the years in which decisions were made.

### Conclusions

The concluding chapter in the study presents the various trends and developments which are apparent from recent court decisions and earlier pronouncements. There is also presented a brief discussion of general implications for public school teachers. A classified list of the important principles or rules of law indicated by this study is presented in the Appendix.



## EMPLOYMENT OF TEACHERS

To insure against the employment of unqualified teachers, all the states have set up systems of certification requiring teachers to secure appropriate licenses for the types of positions to be held. In the granting of teachers' certificates the state legislature usually sets up certain qualifications which must be met by the teachers and then delegates to state or county officials the duty of seeing that the requirements are met. The delegated functions are largely administrative yet there is implied a certain amount of discretionary power. In the exercise of this discretion certifying officials are not liable for errors in judgment. The exercise of such discretion is reviewable by the courts if the evidence reveals that the officials have acted arbitrarily and unreasonably. To fail to issue a certificate to a teacher who has met all requirements of the examining board or official would be an arbitrary or unreasonable action.

After it is issued the certificate of a teacher is not subject to collateral attack. In other words, it can not be used as the basis of dismissal even though the certificate is held by one who is not qualified to receive it. The genuineness of a certificate being admitted, it will be presumed to have been duly issued, and the officer issuing it will be presumed to have satisfied himself of the proper qualifications of the recipient and of the existence of the facts justifying his action in the matter.

While certifying officials must follow the procedures specified for revoking or refusing to issue a certificate, the state itself has full power to revoke a certificate either on the basis of present or future restrictions and conditions. A teacher's certificate is in the nature of a license and "does not confer an absolute right but only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed." It has been held that life certificates are not affected by new legislation unless the act clearly indicates the intention that it shall be retroactive, and, while county or local boards may set up teaching requirements higher than those of the state, such boards cannot change the rights of the holder of a life certificate. Furthermore, a life certificate issued under

one set of standards will have equal rank with one issued under increased standards.

At no time should a teacher seek employment without being the holder of a proper certificate. While some courts consider employment to begin with the opening of school and consider a contract legal so long as the certificate is secured before the term begins, a teacher cannot afford to run the risk of an adverse decision so long as it rests within her power to secure the certificate before signing a contract. Teachers who teach without a certificate are considered volunteers and cannot legally collect for services rendered.

When teachers seek employment in a particular state they should investigate the statutes of that state in regard to oral and written contracts and insist upon a written contract if such is specified in the statutes. Although recovery is sometimes allowed for services rendered without such a contract there are too many adverse decisions to warrant the teacher in running such a risk. If the statute states that the contract must be in writing the teacher should insist upon receiving the contract as soon after election as possible, and having received the contract it should be signed and returned at once, since it has been held in various cases that a board may, by a majority vote, rescind its act of employment at any time before the required document is completed. It has also been held that though no written contract is required a contract cannot rest upon parole when the statute directs that the terms and conditions of employment be entered upon the minutes of the board. The same situation exists when there is a statutory requirement that the minutes show how each board member votes. Well-meaning boards of education may, because of ignorance, fail to provide the teacher with the protection of a legal contract.

Since, according to many decisions, the authority to employ teachers cannot be delegated, teachers who are promised employment by the superintendent of schools or other agent of the board should assure themselves that board action has followed or preceded the election, as otherwise they have no valid contract of employment. It has been held, however, that the hiring of substitute teachers can be delegated and that such teachers can recover for their services even though there has been no formal act of hiring by the board of education.



Most changes pertaining to the employment of teachers relate to the status of tenure teachers. These new practices relating to tenure teachers have resulted, both, from an attempt of local boards of education to avoid their obligations under Teacher Tenure Acts, and from the necessity of passing upon the status of tenure teachers when the tenure statute has been repealed, as is the case in Indiana. It is necessary, for instance, to pass upon the rights of a teacher who has served the probationary period required for tenure but whom the board refuses to classify, or whom the board dismisses and reappoints in order to make the serving of probation of non-effect. According to recent decisions, statutory requirements relating to written contracts do not apply to teachers who have served a probationary period and are entitled to tenure. The classification of such teachers takes place automatically if the board fails to notify the teacher concerning her status, or if it dismisses her and offers her a year by year contract, or otherwise attempts to avoid giving the teacher tenure status. In a number of cases it has been held that the teachers obtain a tenure status even though notified of a dismissal to become effective at the end of the school term providing they are still teaching when a new tenure law becomes effective.

Until very recently it was held that a tenure teacher's rights were based entirely upon the tenure statute and not upon a specific contract between the teacher and the board. With the repeal of the Indiana statute providing for teacher tenure it became necessary to obtain a ruling from the Supreme Court of the United States in regard to this matter since there was no longer a statute upon which to base a writ of mandamus for reinstatement. In the decision which followed the Supreme Court held that there was not only a statutory right but also a contractual right which the repeal of the statute could not destroy for those teachers who had been given indefinite tenure before the repeal. The original statute resulted in the establishment of contract rights which the state is prohibited by the Federal Constitution from impairing. It was further pointed out that in case of the breach of the "indefinite" contract, the teacher can by mandamus compel the board of education to issue a "definite" term contract, upon which a claim for recovery can be based.

In the past it has been held that there could be no ratification of an oral contract contrary to statute. Recently it has

been held that there could be a ratification of the contract in so far as services actually rendered are concerned. In other words, there is an increased tendency on the part of the courts to refuse to allow one party to an invalid contract to profit at the expense of the other. In taking this liberal view an Arizona court declared:

... trustees and the employees alike should observe it [the statute]. It is only because of the unfairness of permitting the school district to accept the employee's labor and service and the benefits therefrom without compensation of such employee that the doctrine of ratification is allowed to be invoked.<sup>3</sup>

When teachers know the law and can make sure of a valid contract in the beginning there will be no need for the ratification of an invalid contract. If, however, the teacher is unable to determine whether or not her contract is valid before entering upon her duties, it is some satisfaction to know that she can demand recovery upon quantum meruit unless she began teaching without a certificate or in some other way entered upon a contract contrary to statute. In the ratification of a contract which is not contrary to the statutes or otherwise illegal it is held that there is established an implied contract which makes effective all the terms of the original contract.

When schools have been closed because of an epidemic, destruction of the building, fire, or other events which make it impossible to conduct school, there naturally arises a question as to the rights of teachers who are thus given an enforced vacation and prevented from performing their contract. Should the closing of school be a direct result of an act of God or a public enemy, or the passage of a law which makes the performance of the contract illegal, the board is usually not liable for the period thus affected. It has been repeatedly held, however, that fire is not a fortuitous event which excuses the board from liability. It is also the rule that the defense of a fortuitous event will not avail where the performance of the contract is not made impossible but merely inconvenient, difficult, or undesirable. While there is some division of opinion on the matter, the weight of authority is to the effect that teachers' salaries must be paid even during the time that school is closed due to the prevalence

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<sup>3</sup>School District No. 6 of Apache County v. Whiting (Ariz.), 79 P. (2d) 958 (1938).



of a contagious disease.

It is held almost without exception that a board of education must act in its corporate capacity in order to make a valid contract with a teacher. Although all members may agree to a certain action, action taken by board members acting separately and without the holding of a board meeting to which all members had proper notice is not binding. If board members are present at an election of teachers but fail to cast their votes it is usually considered that they are acquiescing in the majority vote.

It sometimes happens that teachers are elected at a time when the true status of all of the board members is not known, due either to a contested board election, the questioned eligibility of the candidate, or to the fact that the member has changed his residence. If, however, the questionable member holds office because he has once been legally elected and then removed from the district and there is no de jure officer to take his place, or because of an election or appointment which gives him the appearance of a board member, he becomes a de facto member and his acts are binding even though it may later be discovered that he had no de jure right to the office. Should the teacher at the time of election have definite knowledge that the board member has no right to be a board member the case is quite different since the purpose of the de facto rule is to prevent the public or third parties from being deceived to their hurt.

To secure the services of the best prepared teachers it sometimes becomes necessary to offer them contracts for a period longer than one year. Occasionally there are statutes which make such contracts dependent upon a trial period or otherwise forbid them. When, however, the statutes are silent on the matter, it is an accepted rule in most states that a contract may be entered into which will extend beyond the term of office of some or all of the board members.

#### DISMISSAL OF TEACHERS

There are three recognized sources of authority which permit school boards to dismiss their teachers--(a) the common law acceptance of the necessity of terminating an undesirable contract for sufficient cause, (b) the statutory pronouncements upon

dismissal, and (c) the previously adopted policy or rules of the board itself.

Since teachers' rights grow out of a contractual relationship, they should know that all pertinent statutes as well as all reasonable rules of the board of education automatically become a controlling part of their contracts even though not written therein. Teachers need to know that rules in regard to dismissal for marriage, vaccination, place of residence, Bible reading, etc., have been held reasonable.

A few years ago it would have been held by most courts that contracts in restriction of the marriage of women teachers was contrary to a sound public policy, and that it was unreasonable to cancel the contract of a married woman teacher provided she were just as efficient as before marriage. Influenced, no doubt, by the present economic situation, this attitude has changed until now most courts hold that marriage, contrary to contract or board rules, is a just and reasonable cause for dismissal, and that the efficiency of the teacher is only one of the considerations in deciding upon such dismissals. The Oregon court says, "If at any time such a stipulation (clause restricting marriage) was inimical to public policy we cannot say that it is at the present time."<sup>4</sup> Likewise, the Supreme Court of Indiana, which formerly held that marriage was not a reasonable cause for the dismissal of a teacher, now holds that there are other considerations besides a teacher's efficiency, such as the unemployed young folks of the community, and that marriage is a reasonable cause for dismissal if contrary to an adopted policy of the board. In concluding a reversal of its former position, the court said: "Sound reason supports the view and it must be concluded that the court has been resting in error."<sup>5</sup>

Teacher tenure laws have made necessary the establishment of more definite rules concerning the transfer of teachers and the abolishment of tenure positions. The trend in regard to transfer has been in the direction of less restraint upon the board of education. While it is still held that teachers cannot be reassigned to work which is substantially different, there is

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<sup>4</sup>Hendryx v. School District No. 4 (Ore.), 35 P. (2d) 235 (1934).

<sup>5</sup>McQuaid et al. v. State ex rel. Sigles, 211 Ind. 595, 6 N.E. (2d) 547 (1937).



a tendency to consider principals and even superintendents as teachers under the tenure act and subject to transfer if for the best interests of the schools. Transfer because of personal matters between a teacher and one of the board members will not be allowed, and a wholesale shifting of previously employed teachers is an evidence of bad faith, although the board may claim that such was done for the best interests of the schools.

In regard to abolishment of position as in regard to the transfer of teachers, there seems to be a tendency to leave more to the discretion of the board of education where teachers have a tenure status. The courts look upon this greater freedom of boards as necessary in order to meet changing conditions and to allow for a certain amount of desirable experimentation. As stated by a Pennsylvania court:

Many new fields of experimentation have been launched by our school authorities. Some have been found unsuccessful in accomplishing their purpose, and if appellee's position is upheld, no school board would risk the establishment of any new department, which in the event of failure must be continued or its idle teachers paid.<sup>6</sup>

Closely related to the abolishment of tenure positions is the problem of seniority. When a tenure teacher's position is abolished there arises the question as to her right to the position retained by a non-tenure or probationary teacher. Unlike the non-tenure teacher, the one having tenure is said to have a vested right in her position, and, as such, has seniority rights over non-tenure teachers in the system. Thus the courts have decided that, if there are positions held by teachers without tenure for which the teacher with tenure is qualified, a non-tenure teacher must be dismissed and the work given to the tenure teacher.

In keeping with the preceding observations is the increased tendency to look upon legal board action as final. A few years ago, the weight of authority was to the effect that the action of boards of education in the dismissal of teachers was not conclusive but reviewable by the courts. This weight of authority has shifted to the point where a majority of the courts will not disturb the findings of school boards or committees unless they have acted arbitrarily, corruptly, or in bad faith. Granting that the court might make a better decision than the board, a Colorado

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<sup>6</sup>Ehert v. School District of Borough of Kulpmont (Pa.), 5 A. (2d) 188 (1939).

court has said that "under the present assignment of powers there is nothing that the courts can do about it." The courts will decide whether the board has jurisdiction or is acting according to law, but, as a rule, will not review the sufficiency of the evidence.

While it is true that the board's decision concerning cause for dismissal is usually conclusive, its final decision must be arrived at after a notice of charges has been given and a hearing held at which the teacher is given an opportunity to defend herself. Even when the statutes do not specify "notice and hearing" but provide for dismissal "for cause" the weight of authority is to the effect that a teacher cannot legally be dismissed without being given some opportunity of defense. It has been held that the hearing may be very informal but the notice must be given only after an official meeting of the board of education in which meeting such notice of dismissal was ordered. Acts of an individual member or of all the members speaking as individuals will not be recognized as having weight. As recently quoted with approval from a rather old case:

To bind the county . . . . . Its members may not discharge its important governmental functions by casual sittings on drygoods boxes, or by accidental meetings on the public street; and its chairman, unless lawfully authorized by the board to do some act, or acts, has no more power than has any other member of the board.<sup>7</sup>

If there is a board of appeal provided for by law, teachers should take advantage of an appeal to this body before seeking aid from the courts. As in the case of local boards of education the decision of this higher board is conclusive unless it can be shown that it acted arbitrarily, corruptly, or in bad faith.

Unless a teacher has waived all rights and signed a contract which permits the board to dismiss her at pleasure, it is usually held that regardless of the wording of the statutes teachers can only be dismissed for "legal" cause and that a cause is a legal cause if it bears a reasonable relation to the fitness for holding office. Although the weight of authority is definitely on the side of permitting teachers to voluntarily wave constitutional and statutory rights, a number of courts are opposed to allowing the principle of waiver to operate in such a situation.

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<sup>7</sup> Day v. School District No. 21 (Mont.), 38 P. (2d) 595 (1934).



The reasoning of this minority, which seems sound, is as follows:

When the object of a law is the good of the public as well as the individual, such protection to the state cannot, at will, be waived by any individual, an integral part thereof . . . . The public good is entitled to protection and consideration; and if, in order to effectuate that object, there must be an enforced protection to the individual, such individual must submit to such enforced protection for the public good.<sup>8</sup>

When a teacher accepts a position to teach there is an implied agreement that he or she is prepared to perform the duties required of the position, both as to academic knowledge required and as to the ability to control the classroom. In connection with a discussion concerning dismissal for incompetency it has been held that competency does not involve perfection. An average teacher or one who does not fail too often or too seriously and who puts forth a reasonable effort is considered competent in the sight of the law. In a very recent decision it was held that the teacher's past conduct was open to scrutiny in verifying charges of incompetency. However, a teacher cannot be discharged for incompetency before rendering any service under a contract. Nor can a teacher be dismissed for general dissatisfaction on the part of parents and pupils. In other words, there must be some conduct of the teacher which can be pointed to as causing this undesirable attitude.

Few cases of sex immorality among teachers have come before the courts. In this study of cases, nearly all involving sex immorality were previous to the present century. This does not mean, however, that teachers have not been dismissed recently on charges of immorality. In a very recent dismissal the court held that "immorality is not essentially confined to a deviation from sex morality";<sup>9</sup> that "it may be such a course of conduct as to offend the morals of the community", and be "a bad example for the youths whose ideals a teacher is supposed to foster and elevate." In this same case it was held that conduct which is contrary to the mores of the community may be considered immoral. In the earlier sex cases it was thought that if even charges or suspicion of vice or immorality be once entertained against a teach-

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<sup>8</sup>Benson v. Inhabitants of Town of Newfield (Me.), 1 A. (2d) 227, 1938.

<sup>9</sup>Horosko v. School District, etc. (Pa.), 6 A. (2d) 866 (1939).

er, his influence for good is gone since parents become distrustful and the pupils contemptuous.

Most teachers no doubt have strong political views, but it is evident that they early learned that it was not best either for the well-being of their school or for their position to express them too zealously. While there are too few cases to make any broad generalizations, the rule indicated by available authority is to the effect that teachers will not be allowed to advocate the election of a particular person while in the classroom but that they may engage in political activities outside of the schoolroom so long as their zeal in political activity does not carry them to such a degree of offensive partisanship that their influence in educational work is impaired or proves a detriment to the school interests affected by their services.

School directors may exercise their statutory duty to dismiss a teacher for incompetency or negligence notwithstanding that the teacher may be employed for a definite period of time. If there is no specific statutory provision, "neglect of duty" constitutes "other good and just cause" for dismissal. In determining what constitutes neglect sufficient for dismissal, the court has decided that among other possible kinds of neglect, that of frequent tardiness, temporary absence without sufficient cause, and failure to make required reports and catalogue the library as directed constitute such neglect. Although the teacher has a right to employ a substitute in an emergency she does not have the right to employ such a substitute in order to lengthen her vacation period. A delay, however, in reporting for the opening of school which is due to illness or to traffic delays is not sufficient cause for dismissal.

If wrongfully dismissed, and no board of appeal is provided, the teacher has a right of immediate action against the board in its corporate capacity. While waiting for the court's decision concerning damages or reinstatement a teacher should use reasonable diligence in seeking other employment of a similar nature since the amount of recovery will be determined by actual loss which is arrived at by deducting from the contract figure the amount which the teacher earned or could have earned in similar employment. Should the teacher accept dissimilar work the earnings received in such work should not be credited on his contractual damages, unless the employment is shown to have been in-

compatible with his contractual services. It has been held that a teacher need not accept employment in mitigation even though it be of a similar nature if it is at an "inconvenient place" or in "other locality."

It sometimes happens that there is a period of appeal or further litigation after a writ of mandate ordering reinstatement of the dismissed teacher has been issued. In such cases it is not necessary for the teacher to seek other employment for mitigation purposes. Also a teacher dismissed during the summer need seek no other employment until September, as the teacher is not presumed to be out of employment until there is an offer and rejection of services.

Although the dismissed teacher has a remedy available if the teacher acts promptly, this remedy may be lost if the teacher fails to act in a reasonable time. It is frequently held, in fact, that a teacher who does not act promptly is guilty of laches and not entitled to recovery. There is no set rule for determining when one is guilty of laches. In the cases reviewed in this study the period of delay causing laches ranged from four months to nearly three years. On the other hand, there were cases involving a period of about a year in which laches did not result. A Kentucky court has held that delay, although unreasonable, will not sustain the defense of "estoppel by laches" unless such delay has worked a disadvantage to another.<sup>10</sup> A teacher who is barred from recovery of salary because of laches is also barred from any rights of reinstatement to position.

#### TEACHERS' RIGHTS AND LIABILITIES

From the preceding discussion it is evident that the teachers' political rights and rights to home and family are somewhat restricted. It is further held by the courts that the teacher's conduct must always be exemplary. A teacher has the duty to conduct himself or herself in such a way as to command the respect and good will of the community, though one result may be to deprive the teacher of the same freedom of action enjoyed by persons

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<sup>10</sup>Coulton v. Asher, 149 Ky. 659, 149 S.W. 946 (1912).



in other vocations. This higher standard of living is deemed essential in the conduct of teachers for the reason that teachers are looked upon as exemplars. It is believed that the influence of their examples for good or bad are greater than the example of the ordinary citizen. As stated by one court: "A teacher in the public school system is regarded by both patrons and pupils in the light of exemplar, whose conduct and words are likely to be followed by the children taught, therefore, no conduct or language should be indulged in by the teacher which is calculated to invite criticism."<sup>11</sup>

Inasmuch as suspension or expulsion from school deprives pupils of the benefits of instruction provided for them in the public schools, such punishment should be employed only when the discipline and well-being of the school demands it. The courts have quite generally held that this power of suspension or expulsion may be exercised in enforcing all reasonable rules of the board of education and in meeting unforeseen classroom emergencies. Since teachers are only employees of the board of education it might be thought that teachers have no right to suspend or expel pupils except as authorized by the board. From an examination of a number of cases it would seem that this is not the true situation but that teachers obtain a part of their authority from the fact that they stand for the time being in loco parentis to their pupils. It is pointed out that a situation may be such as to demand immediate suspension or expulsion by the teacher or principal even though no ruling of the board has been violated. A pupil's presence in the schoolroom for even a short time may be "disastrous to the discipline of the school."

Judging from the decreasing number of cases of pupil-punishment coming before the courts, it appears that the guidance emphasis of recent years has been effective in preventing some of the serious disciplinary problems of the past. Cases coming before the courts do indicate, however, that our guidance function has failed in at least one area. Recent "flag-saluting" cases cause us to wonder why we are resorting to force in order to develop patriotism for a democratic society. While not giving wholehearted approval to flag-saluting requirements, the Supreme Court of the United States has made it clear that, legally, state and

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<sup>11</sup>Grover v. Stovall, 237 Ky. 172, 35 S.W. (2d) 24 (1931).

local boards have the right to enforce these rules by expulsion of non-conforming pupils. The reasoning of the Supreme Court is, in part, as follows:

But for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effort of the exercise. . . . That is to say, the process may be utilized so long as men's right to believe as they please, to win others to their way of belief, and their right to assemble in their chosen places of worship for the devotional ceremonies of their faith, are all fully protected.

For ourselves we might be tempted to say that the deepest patriotism is best engendered by giving unfettered scope to the most crochety beliefs. Perhaps it is best, from the standpoint of those interests which ordinances like the one under review seek to promote, to give to the least popular sect leave from conformities like those here in issue. But the courtroom is not the arena for debating issues of educational policies. . . . So to hold would in effect make us the school board for the country. That authority has not been given to this court, nor should we assume it.<sup>12</sup>

While moderate corporal punishment is still upheld by the courts the present tendency is to leave less to the personal discretion of the teacher and to make it necessary for him to justify his action on the basis of what would be necessary and moderate in the minds of a jury of "reasonable men." Bringing together the pertinent facts from numerous court decisions, the rule of law governing corporal punishment can be stated as follows; The teacher may employ moderate corporal punishment to inflict temporary pain, but not seriously endanger life, limbs, or health, or disfigure the child, or cause other permanent injury. He cannot lawfully beat the child, even moderately, however, to gratify his own evil passion. The chastisement must be honestly inflicted in punishment for some offense which the pupil understands. The punishment ought always to be apportioned to the gravity of the offense, the sex, age, strength, and personal attributes of the pupil, and be administered with a proper instrument.

If pupil punishment is excessive or administered in a spirit of malice the teacher is guilty of assault and battery and liable as any other individual. The fists and a piece of flooring have been held improper instruments, and it has been pointed out

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<sup>12</sup>Minersville School District v. Gobitis, 310 U.S. 591, 592 (1940).

that the right to punish moderately does not, necessarily, imply the right to punish until subdued. The courts appear to be divided upon the liability of the teacher for reasonable punishment in the enforcement of an unreasonable rule. It would seem that the kind of rule and the other attending circumstances are largely determinant in the matter. If we eliminate the cases which involve rules requiring pupils to study a particular subject, which infringes upon the parents' rights, the weight of authority is to the effect that the teacher is not liable for reasonable punishment in the enforcement of a rule the wisdom of which is questioned.

Teachers are liable for accidents which are the direct result of some negligence on their part. Whether or not the teacher's act or failure to act constitutes negligence is a case for the jury. Even though the teacher may be guilty of negligence, however, she is not liable for an accident if there is some intervening action of a third party which prevents the teacher's negligence from being the "proximate" cause of the injury. For a teacher to be liable for negligence it is not essential that the teacher's negligence be so extreme as to be wanton or willful. In the discharge of her duties the teacher is bound to use reasonable care, tested in the light of existing relationship. If, through any negligence the teacher is guilty of a breach of such duty and in consequence thereof a pupil suffers injury, liability results. Thus, the test of a teacher's liability for negligence is whether injurious results should be expected to flow from the particular act. "The act, in other words, becomes negligent in a legal sense, by reason of the ability of a prudent man, in the exercise of ordinary care, to foresee that harmful results will follow its commission."<sup>13</sup> An Ohio court has recently expressed the opinion that a teacher would be liable for damages should pupils become ill because she raised a window in such a manner as to cause a draft to play upon the pupils and refused to permit them to escape its effect. The seriousness of the teacher's position may be gathered from a statement made by a Washington court. A pupil was injured while playing with a teeter board on the school grounds. The board had been temporarily removed from its original position and dangerously used on a swing. In sustaining a charge of negligence, the Supreme Court said: "If the teacher

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<sup>13</sup>Gainscott v. Davis (Mich.), 275 N.W. 229 (1937).



knew it, it was negligence to permit it, and, if she did not know it, it was negligence not to have observed it."<sup>14</sup>

The use of the automobile in transporting pupils to interscholastic contests of various kinds has resulted in increased responsibility to teachers. According to recent Idaho decisions a teacher must not only be responsible for pupils under his immediate supervision but he is held liable under the "principal and agent" rule for accidents happening to pupils who may be traveling in the teacher's car. Neither in these cases nor in other liability situations does the teacher enjoy the liability exemption allowed the school board as an agent of the state. It is possible that as the public becomes more fully aware of this difference of status and of its inability to collect damages from boards of education it will more and more direct its damage suits against the teachers themselves unless other states follow the example of the three where the boards also are held liable for tort.

#### PENSIONS, MINIMUM WAGES, AND SALARY CHANGE

The constitutionality of teacher-pension legislation has been challenged on the grounds of "class legislation," the "expenditure of public funds for private purposes," and a "taking of private property without due process of law" which is contrary to Constitutional provision. Almost without exception the courts have held that such laws are constitutional. It is pointed out that, inasmuch as teachers are in a class by themselves vocationally, and the act affects all of the class alike, such legislation cannot properly be called "class legislation." Then too, pensions to teachers do not constitute "expenditure of funds for private purposes" since the primary purpose of such legislation is not to benefit the teachers but to encourage capable teachers to remain in the teaching profession and thus secure a higher efficiency of instruction in the public schools. For this reason the expenditure of funds for pensions is considered a proper public function in the aid of free education. It is further held by the courts that there is not, in reality, a "taking of property

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<sup>14</sup>Bruenn v. North Yokima School District No. 7, 101 Wash. 374, 172, P. 569 (1918).

without due process of law," since any authorized deductions are a part of the teacher's contract which she is free to accept or reject. The legal salary is looked upon as the net amount after the required deductions have been made. Since the payment of a pension by the state is not a "gratuity" but a means of encouraging teachers to remain in the profession, pensions may be provided for teachers who are already in the service and maturity based upon past service together with future service. Of course, pensions may not be provided for teachers who have already ceased teaching.

During the last several years the weight of authority has shifted until now it is commonly held that the pension laws do not create a contractual relationship or give vested rights to teachers even though there be compulsory deductions from the teachers' specified salaries. This principle has the approval of the Supreme Court of the United States. It permits any state to lower or abolish pension payments to retired teachers. Teachers who have elected to become contributors to a pension fund are not affected by this ruling. In Illinois it has been held that voluntary contributors not only have a vested right in the pension fund but may benefit by new provisions passed after their retirement.

In New Jersey, in a reversal decision, the court now holds that the withdrawal of the amount due a teacher from the pension fund does not constitute an automatic surrender of teaching status so as to deprive her of the right of reinstatement.

Legislation establishing a minimum wage for teachers has been held to be constitutional. Although "minimum wage schedules" have been mentioned in connection with teacher contracts, there appear to be few cases dealing with the legislation itself. Several years ago such legislation in Iowa was challenged on the ground that it violated the freedom of contract in that it interfered with the right of a teacher to accept such wage as he pleased. It was also contended that the law violated a provision of the constitution which prohibited the legislature from granting privileges of immunities to any class of citizens. Both these contentions were denied by the courts. It was pointed out that the minimum wage law is written by implication into every teacher's contract, and that although the teacher is free to contract for less compensation than the minimum prescribed by law, she is

entitled to recover the minimum wage.

Largely as a result of teacher tenure legislation, the question has arisen as to the school board's authority to change the rate of a teacher's compensation. This question has received the same answer in many courts. The answer is that a teacher's tenure rights do not establish salary rights or take away the right of the board to set the rate of compensation. Unless specifically limited, the board of education has full authority to change tenure or non-tenure salaries so as to be effective in a subsequent year. Courts look with favor upon salary reduction by classes providing there is a reasonable classification. It was held in Michigan, however, that the classification of married women teachers for compensation purposes in a different class than unmarried female teachers having like qualifications and doing like work is unreasonable and hence invalid.

It frequently happens that tenure statutes contain a clause in regard to demotion in position or salary. According to this clause no demotion or reduction can be made until the teacher has been allowed a hearing. This position does not apply to reduced salary schedules which affect all teachers of a given class equally. It is held that it refers rather to the reduction in a particular teacher's salary which does not affect other teachers of the same class.

On the basis of the number and recency of the cases involved, it seems probable that the teacher's future status may be most affected by court decisions in regard to tenure and pension rights. It is also possible that, should we continue to find new sources of employment for our young people, a changed public policy may soon be reflected in regard to the employment of married women teachers.













